

Serial No. 09/660,027

The searching for a channel by reducing the bandwidth of Jones et al. is different concept than applicant's step of reducing the prescribed period as part of the search. This can be seen from applicant's former claim 7, now canceled, which expressly recited reducing the specified bandwidth. When one reduces the bandwidth, one is assuming that there is unacceptable noise over a particular part of the bandwidth, and that by reducing the bandwidth one may find a portion of the bandwidth with noise, if any, that can be tolerated. Applicant agrees that this is what is taught by Jones et al.

By contrast, what applicant has realized, is that unacceptable noise may exist on a channel during some periods of time, while at other periods of time the very same channel may have noise, if any, that can be tolerated. Thus, for some periods of time, a channel which would otherwise be marked as totally unusable by Jones et al., should it be measured during the period of unacceptable noise, could be taken advantage of by Applicant's claimed invention, which reduces the time period to see if there is an acceptable one.

In other words, there are some channels, which may have unacceptable noise on them for certain limited periods of time. Such channels will be marked by Jones et al. to never be used. However, marking such channels as ever unusable, as Jones et al. does, teaches away from applicant's claim of reducing the prescribed period, because by reducing the prescribed period the channel may be found to have an acceptable noise level, and so, advantageously, be used for at least some time.

Applicant further notes that Jones et al. teaches away from employing a spectrum analyzer of the type taught in applicant's claim which is required to perform the necessary monitoring over time periods. Instead, Jones et al. teaches to use a cheaper spectrum management allocation unit, base upon statistics. (See page 64, lines 21-25 and page 62, lines 33 to page 63, line 5.) Thus, there is no discrete history-over-time measurements made and stored by Jones et al. on which a decision over a shorter time period could be based. Applicant, however, specifically recited in his specification at page 3, lines 1-3, that "advantageously, the spectrum analyzers employed typically maintain a history of the channel power, which permits the selection of the channel to avoid known periodic noise problems". This is a basis of support for applicant's claim 8.

Serial No. 09/660,027

Since Jones et al. teaches away from incorporating in their arrangement the device necessary to implement applicant's invention, applicant's invention cannot be obvious from Jones et al., since requiring the necessary device in Jones et al. would ruin one of the advantages taught for the Jones et al. arrangement. In other words, it would render Jones et al. unsatisfactory for at least one of its intended purposes were one to include in Jones et al. the necessary functionality to support applicant's invention. Thus, as clearly explained in M.P.E.P. 2143.01, there is no suggestion to make the proposed modification.

Consequently, even if reducing the prescribed period was a design choice for reducing the bandwidth—which applicant is not admitting and indeed has shown to be an incorrect suggestion—nevertheless, a rejection based on such a design choice cannot be supported from Jones et al., which teaches away from including the equipment that would be necessary to implement such a design choice. Instead, it seems that the basis of such a suggestion must be improper hindsight from applicant's own teaching.

Therefore, applicant's claim is allowable over Jones et al. under 35 U.S.C. 103(a).

Serial No. 09/660,027

Conclusion

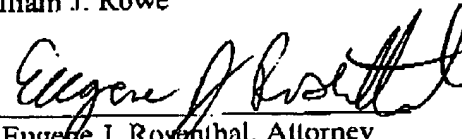
It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, he is invited to call applicant's attorney so that arrangements may be made to discuss and resolve any such issues.

In the event that an extension of time is required for this amendment to be considered timely, and a petition therefor does not otherwise accompany this amendment, any necessary extension of time is hereby petitioned for, and the Commissioner is authorized to charge the appropriate cost of such petition to the **Lucent Technologies Deposit Account No. 12-2325**.

Respectfully,

William J. Rowe

By 
Eugene J. Rosenthal, Attorney
Reg. No. 36,658
732-949-1857

Lucent Technologies Inc.

Date: Aug. 10, 2004